IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 226 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HANSABEN RAMNIKLAL PATHAK - Appellant(s)
Versus
GUJ.STATE ROAD TRANSPORT CORPN & 3 - Defendant(s)

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Appearance :
MR RJ OZA for Appellant(s) : 1,
NOTICE SERVED for Respondent No.1,
MR HS MUNSHAW for Respondent No.2,
NOTICE NOT RECD BACK for R : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/04/2006

ORAL JUDGMENT

1.ADMIT. Mr.HS Munshaw, learned advocate waives the service of admission on behalf of the respondent Nos.1 and 2. Though served, nobody appears on behalf of the respondent Nos.3 and 4.

2.With the consent of the parties, the appeal is taken up for final hearing today, as Mr.RJ Oja, learned advocate, learned advocate appearing on behalf of the appellant has produced the entire documentary as well as oral evidence before this Court for the perusal of this Court and after considering the same, this Court has taken the aforesaid First Appeal for final hearing.

3.By way of this First Appeal under sec.173 of he

Motor Vehicles Act, 1988, the appellant – original claimant has challenged the legality and validity of the judgment and award passed by the Motor Accident Claims Tribunal (Main), Bhavnagar in Motor Accident Claims Petition No.123 of 1985 dtd.10/4/1992 in awarding compensation at Rs.24,100.00 against the claim of Rs.50,000.00.

4.The present appeal is filed by the appellant – original claimant who sustained injuries in the vehicular accident which took place on 19/11/1984 at Bhavnagar Bus Stand at 6.30 p.m. which was driven by the opponent No.3. On 19/11/1984, the appellant had come from Palitana to Bhavnagar and while returning to Palitana, she had come at Bhavnagar Bus Stand at 6.00 PM, and was waiting for Bus to go to Palitana and she was sanding near Otta between Platform Nos.9 and 10. At that time, Bhavnagar Junagadh route bus bearing registration No.GRR 8515 was being driven in reverse condition

with a great speed, recklessly and negligently for parking it on the Platform and at that time, the bus Bus climbed over the Otta and the appellant came to be pressed between railing of the Platform and the rear portion of the Bus, on account of which she received injuries. It appears that the appellant was immediately shifted to Bhavnagar Hospital, where she was admitted as an indoor patient upto 30/11/1984. On account of the vehicular accident, the appellant sustained injuries of fractures of shaft femur of right leg and also received several injuries on thigh, knee, back, wrist etc. It also appears that on 30/11/1984, she was admitted as an indoor patient in a private hospital of Orthopedic Surgeon Dr.Dholakiya as indoor patient till 20/12/1984 and she was operated by Dr.Dholakiya on 4/12/1984. The appellant filed Motor Accident Claims Petition No.123 of 1985 claiming Rs.50,000.00 towards the compensation under the

heads of pain, shock and suffering, future economic loss, loss of income and medical charges inclusive of operation charges, transportation charges, attendance charges etc. The Tribunal awarded in all Rs.24,100.00 compensation, more particularly Rs.7500.00 under the heads of pain, shock and suffering, Rs.600.00 towards transportation charges, Rs.2000.00 towards attendance charges, Rs.7500.00 towards medical expenses inclusive of operation charges, Rs.2400.00 towards loss of income, Rs.4100.00 towards loss of future income. Being aggrieved and dissatisfied with the aforesaid judgment and award passed by the learned Motor Accident Claims Tribunal in M.A.C.P. No.123 of 1985 in awarding compensation of Rs.24,100.00, the appellant – original claimant has preferred the present First Appeal.

5.Mr.R.J. Oza, learned advocate appearing on behalf of the appellant – original claimant has

vehemently submitted that considering the prolonged hospitalization of the appellant and the injuries sustained by the appellant and the fact that the appellant was operated, the Tribunal has materially erred in awarding only Rs.7500.00 under the head of pain, shock and suffering and has submitted that the Tribunal ought to have awarded Rs.15,000.00 towards the pain, shock and suffering. It is also further submitted by Mr.Oza that though against the claim of Rs.3,000.00 towards the conveyance charges, Rs.600.00 only awarded by the tribunal and therefore, it is requested to allow the present appeal accordingly.

6.Mr.Barot, learned advocate appearing on behalf of Mr.Munshaw, learned advocate appearing on behalf of respondent Gujarat State Road Transport Corporation, while supporting the judgment and award passed by the learned Tribunal has submitted that in the facts and circumstances of the case, the Tribunal was

justified in not awarding Rs.7500.00 under the head of pain, shock and suffering and the Tribunal is also justified in awarding Rs.600.00 towards the conveyance charges and therefore, it is requested to dismiss the present petition.

7. Heard the learned advocates appearing on behalf of the parties and perused the relevant evidences, documentary as well as oral.

8. Having heard the learned advocates and considering the material on record, it is clear that the appellant sustained injuries in the vehicular accident in question on 19/11/1984 and that she was immediately shifted to Bhavnagar Hospital wherein she was admitted as an indoor patient till 30/11/1984. In the vehicular accident in question, the appellant sustained injuries of fractures of shaft femur of right leg and also received severe injuries on thigh, knee, back, wrist etc. The appellant was shifted to private hospital of Orthopedic

Surgeon on 30/11/1984 where she was treated as an indoor patient till 20/12/1984 and she was operated by Dr.Dholakiya on 4/12/1984. Thus, at least for a period of one month, the appellant was hospitalized as an indoor patient and as stated above, the appellant was operated upon also. Considering the aforesaid facts and circumstances, the Tribunal has materially erred in awarding Rs.7500.00 towards the pain, shock and suffering. Considering the prolonged hospitalization, operation and injuries sustained by the appellant, the Tribunal ought to have awarded Rs.15,000.00 towards the pain, shock and suffering. Similarly, considering the fact that the appellant was admitted to Government Hospital, Bhavnagar as well as private hospital of Dr.Dholakiya at Bhavnagar, where he was operated also, and the appellant belongs to Palitaka, her mother and husband were requited to attend the appellant as well as were required to come to Bhavnagar from

Palitana at the time of hospitalization as well as thereafter also for follow-up treatment and therefore, considering the same and evidence on record, it appears that the Tribunal has materially erred in awarding Rs.600.00 towards the conveyance charges. Looking to the facts of the case and evidence on record, the Tribunal ought to have awarded Rs.3000.00 towards conveyance charges and to that extent, the appeal is required to be allowed. The rest of the judgment and award passed by the learned Tribunal is not required to be interfered with.

9. For the reasons stated hereinabove, the present appeal is partly succeeds. The impugned judgment and award passed by the Motor Accident Claims Tribunal (Main), Bhavnagar in Motor Accident Claims Petition No.123 of 1985 dtd.10/4/1992 is modified to the extent that instead of Rs.24,100.00, the appellant would be entitled to Rs.34,000.00 towards compensation. The appellant is also entitled to interest at

the rate of 7% on the differential amount from the date of application till realization with proportionate costs.

(M.R.SHAH,J.)

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